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**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

WILLIAM JONES

v.

Docket No. 05-88-044-3

BROOKE COUNTY BOARD OF EDUCATION

D E C I S I O N

William Jones, grievant, is employed by the Brooke County Board of Education as a bus operator. On March 11, 1988 he filed a level four grievance alleging he was wrongfully denied an extra duty bus assignment when the transportation director asked him if he wanted to take an all day out-of-town driving assignment and then subsequently employed other persons for the assignment. A level four hearing was conducted April 14, 1988. Grievant filed proposed findings of facts and conclusions of law on May 6, 1988 and the board submitted proposals May 16, 1988.

Grievant is a 20-year employee of the department and is second on the overall seniority list. On or about December 8, 1987 the transportation director inquired of grievant if he wanted to make an extra trip to Charleston, West Virginia on December 15 to pick up a new school bus. Grievant indicated interest in the assignment and inquired as to the hourly rate for the trip.¹ When the transportation director checked with the school superintendent as to the hourly rate, he was told that he had not followed the proper procedure agreed upon by the bus drivers to select bus operators for that particular trip. The transportation director then acted on information that the buses would be ready for transport on December 14 and selected the operators for the trip according to the late call-in procedures and driving list and did not inform grievant that he was not being considered for the trip or that the trip date was changed.

Grievant contends that his seniority rights were violated as the most senior bus driver was entitled to the trip based on a policy agreed upon by the bus drivers. He contends that he lost four hours of work due to the change of his schedule, i.e., eliminating him from the trip and that he therefore should

¹ Apparently, the county distinguishes types of extra duty runs as "special" trips or extra-curricular and pays different hourly rates accordingly. The grievant believed he should be paid his hourly rate of \$11.00 rather than the \$8.00 per hour allocated for extracurricular trips because he believed that only those trips "hauling" students were extracurricular trips. (T2.4).

be compensated for the four hours. Grievant argues that his daily work schedule cannot be changed during the school year without his written consent per W.Va. Code, 18A-4-8a² and cites W.Va. Code, 18A-4-8b which details the statutory policy for assignment of extra duty work.

The board contends that the transportation director improperly offered the trip to some of the most senior drivers including grievant herein but, as their names were not next in line in the late call-in list, they were not eligible for the trip. When the director later recognized his error he then employed the drivers whose names were in the proper list and rotation sequence for this particular extra driving assignment. The board urges that had it employed grievant for the extra trip, it would have violated its own policy and the statutory mandates and would have generated grievances from those employees who were entitled to the assignment.

In addition to the foregoing narration, the following findings of facts and conclusions of law are appropriate.

² Grievant's reliance on the statute is misplaced in this instance as the obvious intent of the legislation is that a service employee's on-going daily schedule cannot be changed without his consent and work options an employee may exercise beyond his regular work would not be addressed therein.

FINDINGS OF FACT

1. Grievant is a 20-year veteran of the transportation department and is second in overall seniority for bus operators.

2. Bus operators have a board approved agreement in place which regulates the allocation of extra duty driving. The policy follows the mandates of W.Va. Code, 18A-4-8b(b) which requires a rotating basis for assignment of extra duty work among the bus operators with the most senior employee having first preference in accepting the assignment. The drivers have refined this rotating system and designated particular types of driving possibilities with different lists for each type of assignment. List one consists of all regular drivers who may sign up for extra trips that have been posted on Tuesday for the following week. List two will have regular drivers who will be eligible for a trip if a second trip is taken. List three is a list of regular drivers for trips that are late call-ins. Grievant herein was not the next driver scheduled to be asked for an extra duty trip on the late call-in list.

3. In early December, the transportation director had the task of getting some new school buses from a delivery point in Charleston, West Virginia back to Brooke County; it was agreed that this was an unusual extra duty assignment. County policy dictates that scheduled trips with exact dates known in advance are to be posted for the drivers consideration and selection

and drivers for unposted, late call-ins are to be selected on a rotating basis from a separate listing. However, for some unknown reason the transportation director deviated from policy and asked several of the most senior bus drivers, including grievant herein, if they wanted to take the trip to Charleston to pick up the school buses.

4. The board generally pays \$8.00 per hour for extra duty, "extra-curricular" trips but on occasion it pays the drivers their own hourly rate for certain other "special" trips; grievant's hourly rate is approximately \$11.00 per hour. In response to a question about wages for the trip the transportation director went to the superintendent to check as to what the rate of pay would be for this particular extra duty run. He was informed that he had acted in contradiction of the agreement between the bus drivers and the board for allocation of extra duty runs and that the most senior drivers were not necessarily entitled to the trip if they were not at the top of the rotating seniority list for the late call-in list.

5. The transportation director had informed grievant that the trip was to be taken December 15 at 6:00 a.m. However, after speaking with the superintendent, receiving some information that the buses were ready for delivery and considering the unpredictable winter weather, he made a decision to take the trip on December 14 at 9:00 a.m. He properly selected the

employees who were next in line for late call-in trips (unposted) but did not tell grievant of the change of plans or inform him that he would not be eligible to take the trip. Grievant learned of the change when he completed his a.m. run on Monday morning and returned to the garage amid teasing from his fellow employees that a crew left for Charleston without him.

6. Grievant's daily schedule was not changed as a result of the transportation director's selection of persons other than him to go on the extra duty trip and grievant drove his regularly scheduled run on December 14 and 15 and suffered no loss of wages. The transportation director's failure to inform grievant that he was not entitled to the trip or that the trip day was changed was uncalled for, however, the director's lack of courtesy did not create a legal right that grievant be awarded monetary damages because he was not selected to take the trip.

CONCLUSIONS OF LAW

1. Extra duty assignments for service personnel must be allocated on a rotating seniority basis until all of the employees have had an opportunity to perform similar assignments. W.Va. Code, 18A-4-8b(b).

2. W.Va. Code, 18A-4-8b(b) permits properly executed agreements between a board of education and its service employees for assignments to extra duty supplementary work and a board must follow the agreed upon practices in a fair and consistent manner. Moore v. Ohio County Board of Education, Docket No. 35-87-027-3; Mullins v. Kanawha County Board of Education, Docket No. 20-86-222-1.

3. While grievant may have perceived that the agents for the school board in the grievance herein acted in an insensitive manner, school officials did not act in violation of policy, statute or law when it selected persons other than grievant to be employed for the extra duty trip in question.

Accordingly, this grievance is **DENIED** in its entirety.

Either party may appeal this decision to the Circuit Court of Kanawha County or to the Circuit Court of Brooke County and such appeal must be filed within thirty (30) days of receipt of this decision. (W.Va. Code, 18-29-7). Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the court.

DATED: June 22, 1988



NEDRA KOVAL
Hearing Examiner